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[72] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

IBRAHIMBHAI (*Original Plaintiff*), *Appellant v. KABULABHAI AND ANOTHER (Original Defendants), Respondents.**
[5th March, 1888.]

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Execution—Attachment of property of judgment-debtor—Application by third party to have attachment removed—Order refusing to remove attachment—Subsequent payment of amount of decree by judgment-debtor and attachment thereupon removed—Second attachment of same property in execution of another decree—Application again made by same claimant to remove attachment—Order again made against him refusing to remove attachment—Suit by claimant to establish his title to attached property—Limitation for such suit runs from date of order as to second attachment—Limitation—Limitation Act XV of 1877, sch. II, art. 11.

A. obtained a decree against B. and in execution attached certain property. The plaintiff objected and applied to have the attachment removed. His application was rejected on the 14th January, 1881, but on the 23rd March, 1881, the judgment-debtor paid the amount of the decree into Court, and the attachment was thereupon removed.

A. subsequently again attached the same property in execution of another decree against B. The plaintiff again objected under s. 278 of the Code of Civil Procedure (Act XIV of 1882), and on the 9th June, 1883, an application made by him to remove this second attachment was refused. Within one year from that date he filed the present suit to establish his title to the property attached. The defendant contended that the suit was barred, not having been filed within one year from the date (14th January, 1881), of the order made against the plaintiff refusing his application to raise the first attachment.

Held, that the suit was not barred by limitation. No doubt an order had been made against the plaintiff on the 14th January, 1881; but as the attachment in respect of which that order had been made was finally withdrawn on the 23rd March, 1881, although not on the plaintiff's application, and as he continued in possession of the property, there was after the 23rd March, 1881, no right of action remaining to him in respect of the order of the 14th January, 1881, disallowing his claim. The second attachment was a new and distinct act giving a new cause of action on which the plaintiff was entitled to a fresh enquiry and decision.

[F., 31 C. 228 (231); R., 18 B. 241 (243); 1 C.L.J. 296; 26 M.L.J. 499; D., 29 M. 225 = 16 M.L.J. 136.]

SECOND appeal from the decree of S. Tagore, District Judge of Sholapur, reversing the decree of Rav Sahab K. P. Gadgil Joint Subordinate Judge at Sholapur, in suit No. 387 of 1883.

The material facts of this case are as follows:—The first defendant obtained a decree against one Nabibhai in 1880. In execution of this decree he attached the house in dispute. The plaintiff [73] intervened under s. 278 of the Civil Procedure Code (Act XIV of 1882), and sought to raise the attachment. But his claim was disallowed on the 14th January, 1881. A sale-proclamation was issued in due course; but the judgment-debtor having paid the amount of the decree into Court, the attachment was withdrawn on the 23rd March, 1881.

Subsequently the first defendant placed a second attachment on the property in execution of another decree. The plaintiff again applied to have the attachment raised. His application was again rejected on the 9th June, 1883. Within one year from this date the plaintiff filed the present suit to establish his title to the house in dispute, and to have it

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declared that it was not liable to be attached and sold in execution of the first defendant's decree, against defendant No. 2.

The defendants denied the plaintiff's title, and raised the plea of limitation.

The Subordinate Judge held that the suit was not barred by limitation, and that the plaintiff was the owner of the house in question. He, therefore, passed a decree in plaintiff's favour.

On appeal the District Judge was of opinion that the plaintiff having failed on the 14th January, 1881, in his application to remove the first attachment, his cause of action arose on that day, when the order disallowing his claim was passed, and that the fact that he had made a similar application with regard to the second attachment could not give him a fresh right of action so as to enable him to ignore the order already passed against him. He therefore, held that the suit was barred by limitation, not having been brought within one year from the date (14th January, 1881), of the order confirming the first attachment. The decree of the Subordinate Judge was reversed, and the suit dismissed.

Against this decision the plaintiff appealed to the High Court.

Ghanasham Nilkant, for the appellant.—The first attachment having been ultimately withdrawn, we had no cause of action to get the first order against us set aside. It is the second attachment and the second order that gives us a fresh right of action. [74] Refers to *Kashinath Morsheth v. Ramchandra Gopinath* (1) and *Umesh Chunder Roy v. Raj Bullubh Sen* (2).

Manekshah Jehangirshah, for the respondents.—Under s. 283 of the Code of Civil Procedure the unsuccessful claimant to attached property is bound to file a suit to establish his right. Otherwise the order against him becomes final and conclusive. The present suit is barred by limitation.

JUDGMENT.

BIRDWOOD, J.—The plaintiff was on two occasions an unsuccessful claimant under s. 278 of the Code of Civil Procedure to raise attachments placed by the defendant No. 1 on the property now in suit in execution of decrees obtained against the defendant No. 2. The first order against the plaintiff was made on the 14th January 1881; the second on the 9th June, 1883; and the present suit was brought within one year from the latter date. The District Judge has held it to be barred by time, inasmuch as it was not brought within a year from the date of the first order. But here we think that he is wrong, for though the order was made on the 14th January, 1881, the attachment was, by reason of the judgment-debtor's having paid the money, raised on the 23rd March, 1881, on which date the plaintiff's right of action had not become barred. As the plaintiff's object was thus gained on the 23rd March, though not on his application, and as he remained then, as he is now, in possession of the property, there was really no right of action remaining to him in respect of the order of the 14th January, 1881—*Umesh Chunder Roy v. Raj Bullubh Sen* (2). The second attachment thereafter placed by defendant No. 1, in 1883, was a new and distinct act giving a new cause of action on which the plaintiff is entitled to a fresh enquiry and decision—*Kashinath Morsheth v. Ramchandra Gopinath* (1). We, therefore, reverse the decree of the lower appellate Court and remand the case for a hearing on the merits. Costs to abide the result.

Decree reversed.